

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

RAYMOND GOEDEKE,

Petitioner,

v.

CIVIL ACTION NO. 5:05-cv-00554

THOMAS MCBRIDE, Warden,

Respondent.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is Raymond Goedeke's Petition for Writ of Habeas Corpus [Docket 1] filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, to issue proposed findings and recommendations. The Magistrate Judge recommended that this court dismiss the petition because it is prohibited by the applicable statute of limitations [Docket 4]. The petitioner filed objections to the Magistrate Judge's findings on January 13, 2006 [Docket 7].

After carefully reviewing the record, the court **FINDS** it must **REJECT** the Magistrate Judge's findings and recommendations. The court requires additional facts to decide whether Mr. Goedeke's petition was filed within the applicable statute of limitations. Accordingly, the court will hold a hearing to convene in Beckley at 10:00 a.m. on February 23.

At this hearing, the court will listen to testimony and receive evidence to determine whether Mr. Goedecke's petition is timely. The evidence should inform the court's consideration of the applicability of the statutory tolling procedures of 28 U.S.C. § 2244(d)(2). The court **ORDERS** that evidence be presented on the following issues: the extent of any filing the petitioner made in Raleigh

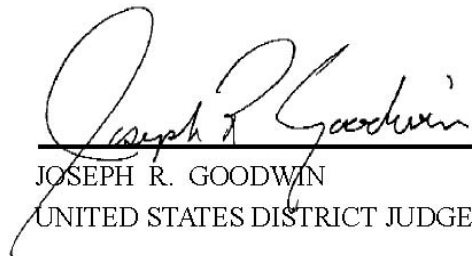
County Circuit Court in 1995, the reasons the Raleigh County Circuit Court appointed counsel for the petitioner on May 4, 1995, and the reasons the Raleigh County Circuit Court did not reconsider the petitioner's appointment of counsel until six years later.

The evidence also should inform the court's consideration of whether the statute of limitations should be equitably tolled in lieu of the events that occurred between 1995 and the present.

The court will appoint counsel to represent Mr. Goedeke on his petition via an accompanying order.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 20, 2006



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE